

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appln. No.: 09/488,337

Appellant(s): Getsin et al.

Filed: January 20, 2000

Title: SYSTEM, METHOD AND ARTICLE OF
MANUFACTURE FOR STORING
SYNCHRONIZATION HISTORY OF THE
EXECUTION OF A MULTIMEDIA
EVENT ON A PLURALITY OF CLIENT
COMPUTERS

Examiner: Avellino, Joseph E.

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6-18-07

Date

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REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Commissioner for Patents
P.O. Box 1450
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Dear Sir:

Appellants submit this reply brief under 37 C.F.R. § 41.41 in response to the Examiner's Answer mailed April 18, 2007 relative to Appellants' filed Appeal Brief filed February 5, 2007 appealing the final rejection of Claims 1-24 in the Office Action mailed June 1, 2006.

(1) Status of Claims

Claims 1-18 were submitted for examination in the application filed on January 20, 2000.

Claims 19-24 were added.

Claims 1, 6, 7, 12, 13 and 18 were amended.

Claims 1-24 remain pending.

Claims 1-24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,769,130 in view of U.S. Patent No. 5,978,835 to Ludwig et al.

Claims 1-24 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Patent No. 6,941,383 in view of Ludwig et al.

Claims 1-24 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,161,132 to Roberts et al. in view of Ludwig et al.

Claims 1-24 are appealed.

(2) Grounds of Rejection to be Reviewed

The following issues are presented for review:

Issue 1: whether claims 1-24 are obvious in view of claims 1-13 of U.S. Patent No. 6,769,130 (referred to below as the '130 patent) to Getsin et al. in further view of U.S. Patent No. 5,978,835 to Ludwig et al (referred to below as the Ludwig patent).

Issue 2: whether claims 1-24 are obvious in view of claims 1-18 of U.S. Patent No. 6,941,383 (referred to below as the '383 patent) to Getsin et al. in further view of the Ludwig patent.

Issue 3: whether claims 1-24 are obvious in view of claims 1-48 of pending U.S. Patent Application Serial No. 10/880,272 (referred to below as the '272 application) to Getsin et al. in further view of the Ludwig patent.

Issue 4: whether claims 1-24 are obvious in view of U.S. Patent No. 6,161,132 to Roberts et al. (referred to below as the Roberts patent) in further view of the Ludwig patent.

Issue 5: whether the Examiner failed to fully consider Appellants' arguments.

(3) Arguments

The following arguments are presented in response to the Examiner's Answer mailed April 18, 2007 and to contest the grounds for rejection presented above. The below arguments are presented in support of the arguments presented in the Appeal Brief.

Appellants respectfully submit that the applied combination of Roberts and Ludwig fails to teach or suggest each limitation recited, for example, in claim 1. Specifically, neither Roberts or Ludwig, nor their combination teach at least:

storing content and timing information transmitted during the simultaneous playback of the event at the host computer; and allowing the content and timing information to be downloaded utilizing the network for playback of said event and said downloaded content and timing information after the simultaneous playback.

The Examiner admits Roberts does not teach storing content or timing information transmitted during a simultaneous playback or allowing downloading of content and timing for playback with the event (see at least Office Action, mailed June 1, 2006, pages 5-6). Instead, the Examiner attempts to rely on Ludwig to show recording of content and timing information and allowing downloading as recited in claim 1. However, Ludwig does not teach recording content and timing information transmitted during a simultaneous event or allowing downloading of content and timing information. Instead, Ludwig only describes:

recording (storage) capabilities are preferably provided for audio and video of all parties, and also for all shared windows, including any telepointing and annotations provided during the teleconference ... such that [t]he output of a MMCR session is a multimedia document that can be stored, viewed, and edited using the multimedia document facilities described earlier. (Ludwig, col. 33, lines 45-61, emphasis added).

There is no discussion of recording timing information transmitted during the simultaneous event or of allowing the downloading of content and timing information for playback with a locally stored event. Ludwig would not record timing information

transmitted during a conference call as Ludwig specifically requires the generation of a single multimedia document that includes all content during the event, and thus, would not record timing information transmitted during the event because any timing is based on the recorded timing and not timing information transmitted during the simultaneous event. Therefore, Ludwig would not record timing information transmitted during the event, and would not allow at least the timing information to be downloaded because there would be no recorded timing information to be transmitted. Still further, Roberts does not teach recording timing information or of allowing downloading of content and timing. Therefore, the combination does not teach each limitation, and even if you combine Roberts with Ludwig the combination at best provides for the recording of all content from a chat session to a single multimedia file without any timing information transmitted during the event and would not record references to local content.

Further, Roberts is directed to a chat session, which by its very nature allows users to continuously interact without timing control of the chat session. It would go against the intended purpose of Roberts to control the timing of a chat session, and Roberts does not teach or suggest controlling the timing of a chat session or recording timing of a chat session. There is no discussion in Roberts to record timing. Ludwig also does not teach or suggest recording transmitted timing information, and instead describes recording content as a sequence into a multimedia document that can be played back without timing information relative to content outside the multimedia document. Therefore, both the Roberts and Ludwig patents fail to teach or suggest at least recording timing information.

Additionally, Roberts only describes the use of text message commands that are interpreted by command plug-ins at the user device. Nowhere does Roberts teach or suggest that the command plug-in track, detect or record timing information. Instead, Roberts only describes “get[ting a] current track and position within the track” (Roberts, col. 4, line 9). As such, Roberts controls playback by controlling track and position within the track and does not suggest using timing or recording timing information.

Further Roberts does not record or control (or provide a mechanism for recording or controlling) the relative timing between playback and the user interaction of the chat session. As pointed out by the Examiner, Roberts operates through the use of text messages (e.g., see Roberts, col. 8, lines 5-14) that indicate commands that a playback device is to implement. There is no teaching of text messages to control timing of these commands, or the timing of these commands relative to the user interaction, and there is no teaching of any mechanism for recording the timing of these commands or their relationship to the user interaction. At most, Roberts suggests a pre-recorded experience that includes a sequence of commands and text data incorporated into a text file (Roberts, col. 8, lines 25-30). However, recording or playback of the sequence of commands and content is not the recording or playback of timing information as claimed by Applicant. Therefore, at best, assuming Ludwig could be combined with Roberts to describe recording a chat session, a recording of a chat session would either be a recording of text messages and commands together with the local content, or a recording of a chat session would be a recording of text messages and commands in a sequence without any timing. There is nothing in Roberts and Ludwig that teaches recording commands, text messages, and timing information without local content. Roberts controls playback of a CD through track and position information, not through timing, and thus, the combination fails to teach each limitation as recited in, for example, claim 1.

Furthermore, Ludwig does not teach or suggest recording references to content locally stored on a user's computer during a simultaneous playback as suggested by the Examiner nor does it describe recording timing information relative to content that is locally stored on a user's computer. Instead, Ludwig specifically requires all content to be recorded without reference to locally stored content and further would not record timing information as there is no reason to record such timing information because all the content is recorded into a single "multimedia document" that would be played back without reference to other content. Any combination of Ludwig and Roberts would not provide a reference to locally stored content or have timing information transmitted

during a simultaneous event. Therefore, the combination of Roberts and Ludwig does not teach at least the recording content and timing information and allowing the content and timing information to be downloaded for playback with locally stored content.

Even if, arguendo, one attempts to combine Roberts with Ludwig, the combination would not suggest recording the content and timing information transmitted during the simultaneous event because the recording according to Ludwig requires the recording of all content with no reference to locally stored content or the recording of at least timing information transmitted during the event.

Still further, Roberts specifically teaches away from recording a chat session. It is the intended purpose of Roberts is to provide users with a “meaningfully interactive” experience where users are “creators of the experience” (Roberts, col. 1, lines 61-65). The Examiner cites column 8, lines 25-30 in attempts to show that Roberts might suggest recording a chat session. However, column 8, lines 25-30 supports Appellants assertions, for example, in stating that the pre-recorded experience is played back to a group of chat users during a chat session that allows the group of users to continue to communicate and participate in the active chat session such that users are participants of the session, and further, Roberts specifically describes that the pre-recorded experience would provide a narrated tour of an audio CD allowing a group of users to participate in the experience of a tour through a CD. A recording of a previous chat session would not provide a user with a narrative through a CD and would not allow a user to be a participant of the chat session.

Roberts does not suggest recording a chat session and instead teaches away from recording a chat session because viewers of the recorded chat session would no longer be participants of an interactive experience. Therefore, the Roberts and Ludwig patents do not teach or suggest recording content and timing information that can be downloaded for playback with a locally stored event. The playback of recorded content and timing information of a simultaneous event that is allowed to be downloaded and played back with a locally stored event is only taught and described in the subject

pending application. Attempting to alter Roberts or Ludwig to suggest such recording and allowed downloading for playback with a locally stored event is only appreciated after an understanding of the benefits provided by Appellants' pending application and applying impermissible hindsight. Therefore, one skilled in the art would not combine Roberts with Ludwig, and Appellants respectfully submit that a *prima facie* case of obviousness has not been established.

Still further, Ludwig requires that all content be recorded. This would result in the combination of Roberts and Ludwig to record any content that may have been displayed from locally stored content during a conference call. Because this content would also be recorded, this content would simply be played back and would not reference a locally stored event. Ludwig does not teach or suggest accessing locally stored content in playing back a previously recorded conference call. Further, Ludwig intends to provide a later user to view the entire recorded conference call. Therefore, Ludwig requires the recording of all content into a single multimedia document, including any content that is displayed from locally stored content, and supplies the later user with all the content as a recorded to be played back.

The Examiner in addressing what the Examiner has identified as points 1.1, 2.1 and 3.1 suggests that:

since the timing and content information of Ludwig includes all content from all parties to be recorded, one of ordinary skill in the art would clearly understand that this would include any references to the locally stored event. (Answer, pg. 9)

Appellants respectfully submit, however, Ludwig does not teach or suggest recording "references to the locally stored event" as suggested. Instead, Ludwig teaches away recording any reference to locally stored content states:

recording (storage) capabilities are preferably provided for audio and video of all parties, and also for all shared windows, including any telepointing and annotations provided during the teleconference. (Ludwig, col. 33, lines 45-47, emphasis added).

There is no suggestion or teaching in Ludwig to record references to locally stored event, and instead, Ludwig teaches away from recording references to and later accessing a locally stored event during later playback of a recorded conference call because Ludwig already has the content displayed during the conference call recorded into the multimedia document and that content would simply be played back from the multimedia document, not referenced to the locally stored event. The combination of Roberts and Ludwig, at best assuming one would combine these references, would provide for the recording of all content during a chat session, including all content from any CD played back during the chat session, with no timing information transmitted during the event or reference information to locally stored content. Therefore, the combination does not teach or suggest all of the limitations as recited, for example, in claim 1.

Further as identified above, Ludwig in describing the multimedia conference recording (MMCR) states that:

[t]he output of a MMCR session is a multimedia document that can be stored, viewed, and edited using the multimedia document facilities described earlier. (Ludwig, col. 33, lines 59-61, emphasis added).

Therefore, Ludwig describes providing a complete document with all content for later playback by a user. All the content is provided within the multimedia document and Ludwig does not teach and instead teaches away from referencing a locally stored event. Any combination of Ludwig with Roberts would at best, assuming the combination could be made, would be a recordation of all content during the chat session without any timing information transmitted during the event or any reference to locally stored content.

Roberts does not teach or suggest recording or even detecting timing information, a mechanism for recording timing or the controlling of the timing of a chat session. Instead, Roberts teaches away from controlling the timing of a chat session in that the chat session is to be an interactive experience for the users (see Roberts, col. 1, lines 63-65). Additionally, any playback of a recorded chat session, assuming the

combination of Roberts and Ludwig would provide for the recording, would only record a sequence of commands to control the playback device, and would not include timing information or timing information to control a chat session. Roberts only describes using current track and position within the track. There is nothing in Roberts and Ludwig or their combination that teaches recording commands, text messages, and timing information without local content. Therefore, the applied combination does not teach all of the limitations at least of the independent claims, and thus, a *prima facie* case of obviousness has not been established.

The Examiner again indicated that the rejection is not based solely on Ludwig but the combinations of Roberts, the claims of the '130 patent, the '383 patent, the '272 application in view of Ludwig. However, the Examiner admits that Roberts and the claims of the '130 patent, the '383 patent, and the '272 application do not teach at least allowing content and timing information to be downloaded as recited, and instead relies on Ludwig. As Appellants have demonstrated, Ludwig requires that all content be recorded. Therefore, the combination of recording all the content even when combined with Roberts or the claims of the '130 patent, the '383 patent, the '272 application would still not record timing information because all content is recorded and would require that all content be recorded and forwarded to a later user. Thus, there would be no use of the transmitted timing information or reference to locally stored content because the content is recorded into the multimedia document.

The Examiner in supporting the arguments states that "Ludwig does disclose the use of downloading the information utilizing the network" (Answer, pg. 10) and directs the Board to Figure 31C of Ludwig. Appellants respectfully submit, however, that generally "downloading of information utilizing a network" cannot be equated to the claimed "allowing ... download[ing] ... for playback of a locally stored event and downloaded content and timing information..." as asserted by the Examiner. Figure 31C

of Ludwig at best shows workstations 12 being linked through a data hub 25 with a server 502. Appellants respectfully submit that there is no teaching or suggestion in Figure 31C to support an assertion that Ludwig describes “allowing ... download[ing] ... for playback of a locally stored event and downloaded content and timing information...” as recited in, for example, claim 1. As demonstrated above, Ludwig does not teach or suggest the downloading of content and timing to be played back with a locally stored event, and instead would not record timing information transmitted during the simultaneous playback because it requires that all content be recorded in a single multimedia document that is provided to a later user. As such, Ludwig does not teach or suggest at least recording timing information transmitted during the simultaneous event or allowing playback of the locally stored event with downloaded content and timing information. Ludwig at best would allow, if arguendo Ludwig describes downloading, the downloading of the single multimedia document with all the content to be played back without referencing any locally stored event.

The Examiner continues suggesting that because client workstations 12-1 to 12-3 are connected via data network lines 13a and 13b, Ludwig “clearly demonstrates that MMCR records are downloaded via a network” (Answer, pg. 10). Again, however, simply allowing downloading cannot be equated to the limitations of at least claim 1. These limitations do not simply recite downloading information. Instead, the claim limitation requires “allowing the content and timing information to be downloaded ... for playback of said event and said downloaded content and timing information...” (e.g., claim 1). The Examiner admits that Roberts and the claims of the claims of the ‘130 patent, the ‘383 patent, the ‘272 application do not describe at least allowing the downloading as claimed and instead relies on Ludwig. However, Ludwig requires the downloading of all content, and would not record timing information transmitted or references to locally stored content because Ludwig requires the recording of all content. Any downloading of the multimedia document would include all content and would not include any reference to the locally stored event. Further as demonstrated above, Ludwig

describes “[t]he output of a MMCR session is a multimedia document” (Ludwig, col. 33, lines 59-60) that includes all of the content information and does not reference a locally stored event. Therefore, the combinations Roberts or claims of the claims of the ‘130 patent, the ‘383 patent, or the ‘272 application and the Ludwig patent do not teach or suggest all of the limitations of at least claims 1, 7, 13 and 19, and thus, a *prima facie* case of obviousness has not been established and Appellants respectfully submit that the rejection cannot be maintained.

The Examiner in addressing Appellants argument 4.1 (as identified by the Examiner) again emphasizes that the rejection is not based solely on Ludwig but the combination of Roberts in view of Ludwig, and continues to assert that “the locally stored event is supplied by Roberts” (Answer, pg. 10). Appellants respectfully submit, however, that Appellants understand that the combination of Roberts and Ludwig is being applied against the claims, but Appellants have demonstrated that the combination fails to teach each limitation. The Roberts patent does not teach or suggest at least “storing content and timing information transmitted during the simultaneous playback of the event” or “allowing the content and timing information to be downloaded ... for playback of said event and said downloaded content and timing information after the simultaneous playback” as admitted by the Examiner (see at least pages 5-6 of office action mailed June 1, 2006), and instead teaches away from storing a chat session in that Roberts describes a system that provides a user with an interactive experience where the user is a participant. The Examiner in rejecting the claims instead relies on Ludwig to suggest recording the content and timing information transmitted during the event and allowing content and timing to be downloaded for playback. However, as demonstrated above, Ludwig would not record the timing information or references to locally stored content because all the content is recorded in the multimedia document, and Ludwig does not allow the downloading of the content and timing for playback with the locally stored event because Ludwig requires that all content be recorded and any playback would be a

playback of the recorded content without any reference to the locally stored event. Roberts also does not suggest recording a previous simultaneous event or allowing the downloading for playback with the locally stored event. Therefore, the combination of Roberts and Ludwig does not teach or suggest all of the limitations as recited.

Still further, as demonstrated above, because Ludwig records all content it would not record timing information transmitted or reference locally stored content but instead would simply record the content within the multimedia document. Roberts does not make any suggestion to record a chat session, and instead teaches away from recording a chat session. Appellants previously demonstrated above and in the Appeal Brief that the main objective of the Roberts patent in providing an interactive experience for the consumer “such that the consumer can also be a creator of the experience” (Roberts, col. 1, lines 63-65). Specifically, the Roberts patent states that “[i]t is a further object of this invention to provide computer programs, systems, and protocols which allow such complementary entertainment to be meaningfully interactive for the consumer, such that the consumer can also be a creator of the experience” (Roberts, col. 1, lines 61-65, emphasis added). Therefore, Roberts does not teach or suggest recording the playback of a simultaneous event, and does not suggest recording timing and content information that can be downloaded and played back with the locally stored event.

As pointed out by the Examiner on page 11 of the Examiner’s Answer that Roberts describes “messages delivered to the users of a chat can be driven from a text file rather than manual typing. This would allow a pre-recorded experience to be played back for a group of chat users” (Roberts, col. 8, lines 25-28). Therefore, Roberts specifically emphasizes that the intended purpose of the system described is to provide users with a “meaningfully interactive” experience where users are “creators of the experience” (Roberts, col. 1, lines 61-65). The “pre-recorded experience” according to Roberts is provided as a tour through a CD during a chat session where users are interacting with each other and participating in the chat session.

Nowhere does Roberts suggest recording a chat session and instead teaches away from recording a chat session because viewers of the recorded chat session would no longer be participants of an interactive experience. Therefore, neither the Roberts nor the Ludwig patents suggest recording content and timing information that can be downloaded for playback with a locally stored event as recited, for example, in claim 1. The playback of recorded content and timing information of a simultaneous event that is allowed to be downloaded and played back with a locally stored event is only taught and described in the subject application. Attempting to alter Roberts or Ludwig to suggest such recording and allowed downloading for playback with a locally stored event is based on the teachings of the subject application and applying impermissible hindsight.

The Examiner continues on page 11 of the Examiner's Answer to suggest "messages can be stored in a text file which would allow the experience to be played back ... No complete audio would need be recorded, since the system would merely store the messages from the chat session to cause the CD to effect that audio" (Answer, page 11, citing Roberts: col. 8, lines 25-30). However, as Appellants demonstrated above, Ludwig only describes "recording ... audio and video of all parties, and also for all shared windows, including any telepointing and annotations provided during the teleconference" (Ludwig, col. 33, lines 45-47, emphasis added), and does not teach or suggest recording references to locally stored content. The combination of Roberts and Ludwig does not teach or suggest recording timing information or recording references to locally stored content during a chat session. Instead, the combination at best would describe recording all audio and video content and all shared windows during a chat session. Therefore, any recording according to the combination would not include any timing information transmitted during the event or references to locally stored event, but instead would provide a multimedia document with all the content contained within the file.

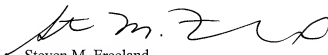
The Examiner further suggests that the claim can be read as merely not forbidding the downloading of content and timing information. Again, however, claim 1 for example does not simply recite the “allowing the downloading” but instead recites “allowing the content and timing information to be downloaded utilizing the network for playback of said event and said downloaded content and timing information after the simultaneous playback” (claim 1). Appellants have demonstrated that the combination does not teach recording content and timing information as claimed, and thus, the combination cannot allow content and timing to be downloaded. Further, the combination of Roberts and Ludwig does not teach or suggest allowing playback of downloaded content and timing information with a locally stored event, and thus, does not teach allowing downloading “for playback of said event and said downloaded content and timing information ...” as claimed. Therefore, the applied combination does not teach each limitation as claimed, and thus, the rejections cannot be maintained.

CONCLUSION

Appellants submit that the rejections of the pending claims 1-24 are in err, and that claims 1-24 are not obvious in view of the applied combinations. Appellants respectfully request a reversal of the final rejection.

Dated: 6-18-07

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven M. Freeland", with a stylized flourish at the end.

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